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## 硕士学位论文

### 善意取得制度瑕疵的民事救济措施

### The Good Intentions Obtain The System Slight Defect The Civil Remedial Treatment

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## 摘 要

物权具有追及效力，这种追及效力又称物权的“追及性”或“追击权”效力，指物权成立后，其标的物不论辗转至何人之手，物权的权利人均可追及标的物之所在，而直接支配其物。但善意取得制度限制了所有权之上的追及权的效力，解决了善意有偿的买受人取得动产、不动产所有权的正当性，一定程度上牺牲了所有人的利益，它对于维护商品交换的安全和良好秩序具有重要的作用。因此，许多国家和地区的民法都确认了善意取得制度。对于这一制度，人们关注更多的是它的历史沿革、构成要件、法律效果等问题，该制度解决了标的物原所有权人和善意受让人之间的物权归属问题，对善意买受人所取得的标的物质量瑕疵、迟延交付、加害交付等涉及善意受让人与无权处分人之间债权问题却很少关注过。以致当出现上述问题时，善意取得制度本身无法解决，这成为善意取得制度美中不足之处，而这些问题都是司法实践中常碰到的。在这种情况下，善意受让人如何寻求民事救济呢？要解决此问题，只能从善意取得制度外一无权处分寻求上述问题的救济路径。在善意取得的背景下，无权处分行为包含两个方面的因素，一是行为人处分财产的行为；二是因行为人处分财产的行为而使行为人与相对人（即善意受让人）订立合同。这样解决上述问题的思路便集中在讨论无权处分人和善意受让人之间合同的效力上，如果在善意取得的背景下无权处分合同有效，则善意受让人不但有权获得标的物的所有权，而且当标的物有质量瑕疵、无权处分人迟延交付标的物等，还能通过追究无权处分人的违约责任，获得充分的救济；否则，只能通过缔约过失责任获得相应的救济，而这种救济对善意受让人来说就不够充分。本文从法律和理论角度分析了善意取得下无权处分合同的法律效力，得出无权处分合同为有效是自然且法理的，这样，善意买受人在获得质量有瑕疵的标的物、无权处分人迟延交付标的物等涉及债权问题时，可通过追究无权处分人的违约责任来获得救济。

**关键词：**善意取得；瑕疵；民事救济

## Abstract

The real right has overtaken the potency, This kind overtakes the potency saying that the real right "overtakes the nature" or "the pursuit power" the potency, After referring to the real right to be established, No matter its subject matter does go through many places to who the hand, The real right average per person may overtake the subject matter to be at, But controls its thing directly But the good intentions obtained the system to limit above the property rights to overtake the power the potency, Solved the good intentions paid vendee to obtain the movable property, the real estate property rights validity, In the certain extent has sacrificed all person's benefit, It has the vital role regarding the maintenance commodity exchange's security and the good order Therefore, many national and the local civil law confirmed the good intentions obtain the system Regarding this system, what the people pay attention are more is questions and so on its historical evolution, constitution important document, legal effect This system has solved between the subject matter original owner and the good intentions grantee's real right ownership question, obtains the subject matter quality slight defect, the delay payment to the good intentions vendee, to injure the payment and so on to involve the good intentions grantee with to have no right to punish between the human the creditor's rights question actually very little to pay attention. So when has the above question, the good intentions obtain system itself inextricability these questions, this becomes the good intentions to obtain place of the system minor defect in something otherwise perfect, but these questions are in the judicial practice often bumps into In this case, how does the good intentions grantee seek the civil relief? Must solve this problem, can only obtain outside the system from the good intentions - to have no right to punish seeks the above question the relief way. Obtains in the good intentions under the background, has no right to punish the behavior to contain two aspects the

factors; first, the author punishes the property the behavior; Second, because the author punishes the property the behavior to cause the author and the relative person (i.e. good intentions grantee) works out the contract. Such solution good intentions let the material quantity slight defect question the mentality then concentrate, in the discussion has no right to punish between the human and the good intentions grantee in the contract potency, If has no right under the background which the good intentions obtain to punish the contract to be effective, not only then the good intentions grantee is authorized to obtain the subject matter the property rights, If the subject matter has the quality slight defect, but can also have no right through the investigation to punish person's violation responsibility, obtains the full relief; Otherwise, can only through conclude a treaty the neglect duty to obtain the corresponding relief, but this kind of relief is not very full to the good intentions grantee. Under this article analyzed the good intentions from the law and the theory angle to obtain has no right to punish the contract the legal effect, obtained has no right to punish the contract is effective, Thus, The good intentions vendee when obtains the quality to have the slight defect subject matter, to have no right to punish the human to delay the payment subject matter and so on to involve the creditor's rights question, may through the investigation have no right to punish person's violation responsibility to obtain the relief.

**Keywords:** The good intentions obtain Slight defect Civil relief.

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